

18 September 1954

MEMORANDUM FOR: Deputy Assistant Director for Personnel

SUBJECT : Applicability of the Lloyd-LaFollette Act to the  
Removal of Agency Employees

1. Reference is made to your memorandum of 8 September 1954, requesting our opinion as to whether or not the Central Intelligence Agency is legally bound to follow the provisions of the Lloyd-LaFollette Act (37 Stat. 555; 5 USCA § 652(a)) as amended, in removing employees who have previously acquired competitive status.

2. The Lloyd-LaFollette Act provides in part as follows:

"No person in the classified civil service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing. Any person whose removal or suspension without pay is sought shall (1) have notice of the same and of any charges preferred against him; (2) be furnished with a copy of such charges; (3) be allowed a reasonable time for filing a written answer to such charges, with affidavits; and (4) be furnished at the earliest practicable date with a written decision on such answer . . . ."

Thus the initial question is whether or not individuals with competitive status who accept positions with CIA, are "in the classified civil service."

3. It may be stated that for an individual to be considered as in the classified civil service, he must have competitive status and must occupy a classified position. In this connection, see Bailey v. Richardson (182 F. 2d 46, 53 (1950)). However, in view of the exemption set forth in section 202 (16) of the Classification Act of 1949, as amended, (5 USCA § 1071), it is apparent that Agency employees cannot comply with the latter requisite since the import of that provision is to place positions with CIA outside of the classified service.

4. Accordingly, it is the opinion of this office that inasmuch as Agency employees cannot be deemed to be in the classified civil service, there is no legal requirement that CIA comply with the procedures set out in the Lloyd-LaFollette Act in removing from its rolls personnel who may have previously acquired competitive status. And we do not believe that this view in any way conflicts with the decision in Booth v. Brownell (Civil Action No. 12126, July 16, 1954). Conceding that an individual does not cease to be in the classified service by virtue of an administrative fiat "excepting" his position, we believe that a different result obtains when he accepts employment with an agency which is excepted by statute from the classified service.

25X1A9a

  
Office of General Counsel

*Att.*  
OGC:RJB:jk

Orig. - Addressee

- 1 - Legal
- 1 - Vital
- 1 - Subject
- 1 - Signer
- 1 - Chrono